

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

HENRY M. DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:10-CV-1429 NAB
)	
MICHAEL WHITE, et al.,)	
)	
Defendants.)	

PLAINTIFF'S MOTION FOR ORDER
ADVISING WITNESS CHRIS PILLARICK OF BEING HELD IN CONTEMPT
IF HE FAILS TO APPEAR AT TRIAL PURSUANT TO THE SUBPOENA

COMES NOW Plaintiff Henry M. Davis ("Plaintiff"), by and through his attorney, and for his Motion for this Court to Issue an Order Advising Witness Christopher Pillarick of Being Held in Contempt if he Fails to Appear at Trial Pursuant to Subpoena and state as follows:

1. On March 3, 2014, the undersigned executed a subpoena to be served on Witness Chris Pillarick and commanding Mr. Pillarick at appear in this Honorable Court's Courtroom 9 North on Monday, March 24, 2014 to give testimony at trial in this above-captioned case. (*See Plaintiff's Exhibit 1 attached hereto*).

2. Mr. Pillarick was served with the Subpoena on March 8, 2014. (*See Plaintiff's Exhibit 2 attached hereto*).

3. In addition to the Subpoena, Mr. Pillarick was served with a witness fee check, #2576 in the amount of \$54.92. (*See Plaintiff's Exhibit 3 attached hereto*).

4. The undersigned's process server set forth in his affidavit of service that Mr. Pillarick stated that he was not going to cash the check and was not going to appear at the [trial]. (*See Plaintiff's Exhibit 3 attached hereto*).

5. The Subpoena advises Mr. Pillarick that, “CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.”

6. As Mr. Pillarick has expressed that he intends on failing to obey the Subpoena, Plaintiff respectfully requests this Honorable Court to enter an Order advising Mr. Pillarick that he could be held in contempt if he fails to obey the Subpoena, which could include a writ of body attachment to be executed by the U.S. Marshalls.

7. Rule 45(g) of the Federal Rules of Civil Procedure states that, “The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or *an order related to it.*” (*emphasis added*). See Fed.R.Civ.P. 45(g).

8. The order sought by Plaintiff in this Motion is such an order relating to the Subpoena, which advises Mr. Pillarick of the consequences of his expressed intent of failing to obey the Subpoena.

9. If Mr. Pillarick does in fact fail to obey the Subpoena, Plaintiff will move for Mr. Pillarick to be held in contempt and will seek a Writ of Body Attachment from this Court ordering the U.S. Marshalls to secure Mr. Pillarick and bring him to court to testify.

10. Additionally, 18 U.S.C. § 401 provides that:

“A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as--

- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) Misbehavior of any of its officers in their official transactions;
- (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.”

18 U.S.C. § 401.

11. A writ of body attachment is well within this Court's discretion. *(In a prior case, the undersigned sought similar relief regarding a prior officer who failed to obey a subpoena for his deposition that was issued in the district court of prior officer's new home state of Kentucky. The Honorable Judge E. Richard Webber found he had the authority to issue a writ of body attachment on a person in another district. See Plaintiff's Exhibit 4 attached hereto).*

12. Plaintiff will be extremely prejudiced if Mr. Pillarick is not required to appear and testify.

13. Mr. Pillarick is a direct witness to both Plaintiff's claim of due process violation and Michael White's claim of battery.

14. Although Mr. Pillarick's deposition was taken on July 1, 2013, Defendants' counsel provided the undersigned with jail notes of Mr. Pillarick on August 19, 2013, well after Mr. Pillarick's deposition and near the close of discovery. *(See Plaintiff's Exhibit 5 attached hereto).*

15. The jail notes have been identified by Plaintiff as a trial Exhibit 8 based on Mr. Pillarick's appearance at trial. (Defendant has identified the same jail notes as Deft – F).

16. Foreseeing the need for Mr. Pillarick to testify at trial, the undersigned even asked Mr. Pillarick, "I only have one question. We're set for trial in about 8 or 9 months. Do you have any intention of moving your residence in case we need your testimony?" and Mr. Pillarick responded, "No."

17. Also, Mr. Pillarick did not waive signature and chose to read his deposition and has never signed the signature page or submitted errata sheets.

18. A copy of this motion is being mailed to Mr. Pillarick on March 15, 2014, first-class, postage prepaid.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully requests this Honorable Court to grant his Motion for this Court to Issue an Order Advising Witness Christopher Pillarick of Being Held in Contempt if he Fails to Appear at Trial Pursuant to Subpoena and for such other and further relief this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

James W. Schottel, Jr. #51285MO
906 Olive St., PH
St. Louis, MO 63101
(314) 421-0350
(314) 421-4060 facsimile
jwsj@schotteljustice.com

Attorney for Plaintiff
Henry M. Davis

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2014, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Peter J. Dunne
dunne@pspclaw.com

Robert T. Plunkert
plunkert@pspclaw.com

Attorneys for Defendants
Michael White
John Beaird
Kim Tihen
City of Ferguson, Missouri

I further certify that a copy of the foregoing was mailed first-class, postage prepaid to the following on March 15, 2014.

Chris Pillarick
111 Robert Ave
Ferguson, MO 63135

*s/James W. Schottel, Jr.*_____